



**Washington, D.C.
Regional Office**
1016 16th Street, NW
Suite 100
Washington, DC 20036
Tel: 202.293.2828

**National
Headquarters
Los Angeles
Regional Office**
634 S. Spring Street
Los Angeles, CA 90014
Tel: 213.629.2512

**Chicago
Regional Office**
11 East Adams
Suite 700
Chicago, IL 60603
Tel: 312.427.0701

**San Antonio
Regional Office**
110 Broadway
Suite 300
San Antonio, TX 78205
Tel: 210.224.5476

**Sacramento
Policy Office**
1512 14th Street
Sacramento, CA 95814
Tel: 916.444.3031

Submitted via www.regulations.gov

January 2, 2026

Andrew Good
Chief, Office of Policy and Strategy
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

**Re: DHS Docket No. USCIS–2025–0205, Collection and Use of Biometrics by
U.S. Citizenship and Immigration Services**

Dear Mr. Good:

I write on behalf of MALDEF (Mexican American Legal Defense and Educational Fund) in response to the Federal Register notice of proposed rulemaking (NPRM) that U.S. Citizenship and Immigration Services (USCIS) within the U.S. Department of Homeland Security (DHS) published on November 3, 2025.¹ Founded in 1968, MALDEF is the nation’s leading Latino legal civil rights organization. Often described as the “law firm of the Latino community,” MALDEF promotes social change through legislative and regulatory advocacy, community education, and high-impact litigation in the areas of voting rights, education, immigrant rights, employment, and freedom from open bias.

The NPRM raises serious privacy concerns and proposes several ill-reasoned and unjustified policy changes. The NPRM seeks to mandatorily require “any applicant, petitioner, sponsor, supporter, derivative, dependent, beneficiary, or individual filing or associated with a benefit request or other request or collection of information, including U.S. citizens, U.S. nationals and lawful permanent residents, and without regard to age,” to provide sensitive biometric data to DHS, subject to limited and currently undefined exemptions.² It formally expands the definition of “biometrics” from only including “fingerprints, photographs, and signatures” to now including ocular imagery, palm prints, voice prints, and DNA, including partial DNA profiles.³ The NPRM creates a “continuous immigration vetting” regime, requiring individuals to repeatedly submit biometric information to DHS—“without regard to any immigration filing—until they obtain or acquire

¹ Collection and Use of Biometrics by U.S. Citizenship and Immigration Services, 90 Fed. Reg. 49062 (Nov. 3, 2025) (“NPRM”).

² *Id.* at 49064, 92.

³ *Id.* at 49066, 49080-81.

U.S. citizenship.”⁴ It removes age limitations on the collection of sensitive biometric data,⁵ seeks to conduct DNA testing to confirm the sex of benefit applicants,⁶ and removes the presumption of good moral character for child victims under the age of 14 who are applying for VAWA or T nonimmigrant adjustment of status relief, amongst other changes.⁷

DHS lacks the statutory authority to create this mandatory expanded biometric data collection regime. DHS also fails to adequately explain the reasons for several of its proposed changes, and fails to consider several critical policy concerns in violation of the Administrative Procedure Act (APA). These ill-proposed and unjustified changes, moreover, will have a disproportionate harmful effect on the Latino community. MALDEF thus respectfully requests that DHS rescind the NPRM in its entirety.

I. Argument

a. DHS Lacks the Statutory Authority to Collect Expanded Biometric Data on a Mandatory Basis as Contemplated by the NPRM

“Federal agencies are creatures of statute. They possess only those powers that Congress confers upon them.”⁸ “If no statute confers authority on a federal agency, it has none.”⁹

Under the current biometric information collection regime, DHS only considers photographs, fingerprints, and signatures as “biometric” information, and it collects that information on a mandatory basis for a limited set of benefits requests.¹⁰ For all other requests, DHS collects that biometric information, as well as DNA information, on a case-by-case basis when the circumstances justify the collection of such information.¹¹

The NPRM, however, expands the definition of biometrics to include ocular imagery, palm prints, voice prints, and DNA, including partial DNA profiles.¹² It also “flip[s] the current construct from one where” “biometrics are only mandatory for certain benefit requests[,]” “to a system under which biometrics are required for any immigration benefit request, other request, or collection of information unless DHS determines that biometrics are unnecessary for a specific population or benefit.”¹³ This expanded biometric surveillance regime extends to U.S. citizens, nationals, and lawful permanent residents (LPRs), and the NPRM does not provide formal specific guidance as to what populations or benefits will not require collection of the expanded biometric data.¹⁴

⁴ *Id.* at 49065.

⁵ *Id.* at 49083.

⁶ *Id.* at 49078.

⁷ *Id.* at 49086-89.

⁸ *Judge Rotenberg Educ. Ctr., Inc. v. United States Food & Drug Admin.*, 3 F.4th 390, 399 (D.C. Cir. 2021) (citing *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988)).

⁹ *Id.*

¹⁰ NPRM at 49066, 49074. Later in the NPRM, however, DHS states that under the current regime, it only currently considers photographs and fingerprints as biometric information. *Id.* at 49080. This appears to be a typo.

¹¹ *Id.* at 49074.

¹² *Id.* at 4080-81.

¹³ *Id.* at 49074.

¹⁴ *See id.* at 49092.

DHS claims a “broad statutory authority under the INA to” create this mandatory expanded biometric surveillance regime.¹⁵ This claim, however, fails upon examination of DHS’s cited authorities.

The NPRM points to Immigration and Nationality Act (INA) § 103(a)(1), which merely charges the Secretary of Homeland Security with “the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of” noncitizens.¹⁶ This includes “establish[ing] such regulations...and [issuing] such instructions...as” the Secretary “deems necessary for carrying out” the Secretary’s provided authority.¹⁷ It points to INA § 287(b), which broadly authorizes DHS “to take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States, or concerning any matter which is material or relevant to the enforcement of this chapter[.]”¹⁸ And it cites INA § 235(d)(3), which grants immigration officers the “power to administer oaths and to take and consider evidence of or from any person touching the privilege of any [noncitizen] or person [the officer] believes or suspects to be [a noncitizen] to enter, reenter, transit through, or reside in the United States or concerning any matter which is material and relevant” to the enforcement of immigration law.¹⁹

DHS is correct that these are broad authorities, but they are merely general grants of authority to administer the immigration system. Nowhere do these statutes authorize the creation of a massive biometric surveillance regime, especially if there is not a specific evidentiary need to collect such biometric information for an immigration benefit application or immigration proceeding.

When interpreting statutory text, each provision must be considered in the context of the whole act.²⁰ Applying this traditional tool of statutory construction to the whole of the INA makes DHS’s position particularly implausible, as the INA is littered with specific and limited grants of authority to collect particular biometric data in particular circumstances, which the NPRM itself acknowledges on multiple occasions.²¹ The INA is thus clear: when Congress wants DHS to collect biometric data, it clearly and specifically tells DHS when to do so and what kind of information to collect.

The NPRM acknowledges this statutory problem, but it can only address it with circular reasoning, summarily concluding that because DHS has a general grant of authority to administer the immigration system, Congress’ specific and limited grants of authority for when and what biometric data DHS may collect “do not preclude or limit DHS from collecting additional modalities or expanding the populations subject to biometric requirements.”²² This reading ignores the principle that specific provisions take precedence over more general ones, with the result that Congress’s limited grants of authority to collect biometric data are rendered superfluous.

¹⁵ NPRM at 49070.

¹⁶ See *id.*; Immigration and Nationality Act (INA) § 103(a)(1), 8 U.S.C. § 1103(a)(1) (2024).

¹⁷ *Id.* § 103(a)(3).

¹⁸ *Id.* § 287(b).

¹⁹ *Id.* § 235(d)(3).

²⁰ See, e.g., *United States v. Pacheco*, 225 F.3d 148, 154 (2d Cir. 2000) (The whole act rule requires that statutory provisions be “interpret[ed] ... in a way that renders [them] consistent with the tenor and structure of the whole act or statutory scheme of which it is a part.”) (citation and quotation omitted).

²¹ See, e.g., NPRM at 49072, 49084 (citing various INA statutes authorizing the collection of limited biometric data under specific circumstances).

²² See *id.* at 49072.

The NPRM erroneously interprets the INA, and DHS thus lacks the statutory authority to create this expanded biometric surveillance regime. It must rescind the NPRM.

b. DHS Lacks the Statutory Authority to Remove the Age Restrictions for Biometric Data Collection, and It Failed to Engage in Reasoned Decision-Making in Determining to Collect Biometric Information from Children, U.S. Citizens, and LPRs

Under the current framework, DHS “codified several of its regulatory biometric submission requirements with restrictions on the ages of individuals from whom biometrics could be collected.”²³ The NPRM seeks to get rid of these age restrictions—but not just for individuals who have NTAs issued in removal proceedings—it seeks to eliminate these sensible restrictions “writ large[.]”²⁴ These proposed changes in the NPRM, however, run into two problems.

First, DHS lacks a statutory basis for eliminating all current age restrictions. Its primary statutory basis for this change remains its general grants of authority to administer the immigration system.²⁵ Again, Congress has demarcated specific and limited situations where it authorized DHS to collect a particular set of biometric data from individuals under the age of 14, which the NPRM is forced to acknowledge.²⁶ But the NPRM again ignores the problem, summarily asserting (without any explanation) that it has determined these “statutes do not restrict or limit the collection of biometrics to these ages.”²⁷ The NPRM thus fails to identify a statutory basis for why DHS may remove age restrictions from its biometric surveillance regime.

Second, by eliminating age restrictions on biometric data collection, and by collecting biometric data and DNA information from children and related U.S. citizen and LPRs, DHS has failed to engage in the reasoned decision-making required by the APA.²⁸

DHS’s recent DNA collection practices should have prompted the agency to question whether it is appropriate to massively expand its collection of such data. Recent evidence shows that DHS has been collecting DNA from detained children, including 227 who were under the age of fourteen.²⁹ In fact, a recent report from Georgetown Law’s Center of Privacy & Technology found that DHS sent the DNA of 95 erroneously detained U.S. citizen children as young as four years old to the FBI for processing between October of 2020 and December of 2024, and “there does not appear to be *any* principle, legal or otherwise, governing the decisions [DHS] agents make about whether to take a person’s DNA.”³⁰

DHS claims that eliminating age restrictions will help “to identify fraudulently claimed genetic relationships” that it alleges result from the *Flores* Settlement Agreement’s requirement that DHS

²³ *Id.* at 49083.

²⁴ *Id.*

²⁵ *See id.* (quoting INA § 287(b) as authority to collect biometrics from individuals under the age of 14 “categorically”).

²⁶ *Id.* at 49084.

²⁷ *Id.*

²⁸ *See Bhd. of Locomotive Eng’rs & Trainmen v. Fed. R.R. Admin.*, 972 F.3d 83, 115 (D.C. Cir. 2020) (quoting *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020)).

²⁹ Dhruv Mehrotra, *The US Is Storing Migrant Children’s DNA in a Criminal Database*, WIRED (May 29, 2025), <https://www.wired.com/story/cbp-dna-migrant-children-fbi-codis/>.

³⁰ GEORGETOWN L. CTR. ON PRIVACY & TECH., *RAIDING THE U.S. CITIZEN GENOME* 2–3 (2025).

release detained noncitizen children from custody within a certain amount of time.³¹ It alleges that so-called noncitizen smuggling operations know of this “loophole” and seek to exploit it by fraudulently claiming genetic relationships among detained family units.³² But DHS fails to cite compelling data to support these claims, instead referencing an archived DHS news post issued during the first Trump administration.³³ Failing to provide timely and relevant evidence of fraud in this instance is particularly concerning, as collecting genetic information to identify supposed fraudulently claimed genetic relationships will require DHS to collect DNA and other biometric evidence from LPRs and U.S. citizens, which the NPRM expressly contemplates.³⁴

The NPRM further proposes to collect biometrics data from U.S. citizens and lawful permanent residents (LPRs) if they “filed a benefit request, other request, or collection of information in the past and it was either reopened or the previous approval is relevant to a...request...currently pending with DHS.”³⁵ It at least acknowledges that legitimate family relationships can exist among individuals who are not genetically related and does not purport to apply to family members who are not genetically related to one another.³⁶ But, in doing so, DHS fails to address how only collecting biometrics information to verify claimed genetic relationships will prevent supposed fraud in the context of family relationships where the family members are not genetically related to one another.³⁷

DHS also claims that collecting biometrics from U.S. citizens, nationals, and LPRs will help it comply with laws such as the Adam Walsh Child Protection and Safety Act (AWA), which prevents a U.S. citizen or LPR from filing family-based or fiancé(e) visa applications if the citizen or LPR has been convicted of certain offenses against a minor.³⁸ However, DHS’s claim that name-based background checks are insufficient compared to biometrics-based FBI criminal history checks is unconvincing: biometrics collection, especially on the scale DHS proposes, is extremely invasive and requires far greater justification than what DHS offers.³⁹

If DHS wishes to expand its biometric surveillance regime to collect sensitive biometric data from children, LPRs, and U.S. citizens, it must provide *some* timely and compelling evidentiary basis for doing so, given the serious privacy concerns such a program raises. The NPRM’s failure to make such a showing demonstrates that DHS has failed to engage in the reasoned decision-making required by the APA.

c. DHS’s Proposed Removal of the Presumption of Good Moral Character for VAWA and T Nonimmigrant Applicants Under the Age of 14 is Arbitrary and Capricious

³¹ NPRM at 49065–66.

³² *Id.* at 49066.

³³ *Id.* at 49066, note 12.

³⁴ *See, e.g., id.* at 49089–90 (noting that DHS will collect biometric evidence “from any individual, including U.S. citizens, nationals, and LPRs, who is otherwise associated with an immigration benefit request, other request, or collection of information as a means to deter and prevent fraud”).

³⁵ *Id.* at 49065.

³⁶ *Id.* at 49066.

³⁷ *Id.*

³⁸ *Id.* at 49085.

³⁹ *Id.* at 49086.

The NPRM’s proposal, seeking “to remove the automatic presumption of good moral character for [Violence Against Women Act (VAWA)] self-petitioners...[and] T nonimmigrant adjustment of status applicants under [fourteen (14)] years of age” and to require instead that such young VAWA self-petitioners and T nonimmigrant adjustment applicants “submit biometrics like any other VAWA self-petitioner[,]”⁴⁰ also lacks the reasoned decision-making required by the APA.

Although the NPRM removes the presumption of good moral character for petitioners under the age of 14, it nevertheless acknowledges that such petitioners “will still not be required to submit evidence of good moral character ... as initial evidence with their self-petitions.”⁴¹ It seeks to eliminate the formal presumption of good moral character for such victims—not because there is evidence petitioners lacking in good moral character are being granted VAWA or T nonimmigrant adjustment of status relief—but only to “align the VAWA [and T nonimmigrant adjustment of status] provisions with the agency’s goal regarding biometric collections from all applicants ... without regard to age[.]”⁴² Put another way, the agency seeks to abandon the presumption of good moral character for child victims of trafficking and domestic physical and sexual abuse because doing so fits the agency’s broader goal of collecting as much biometric data from as many people as possible. This decision has nothing to do with making accurate VAWA and T nonimmigrant adjustment of status decisions, and it fails to consider or respect the privacy of these child victims.

It, moreover, signals that we should treat child victims of horrific crimes with suspicion rather than compassion. While these changes, as the NPRM appears to concede, will have little utility for DHS as compared to the current regulatory regime,⁴³ they will subject young trafficking and domestic sexual and physical abuse victims to intrusive and unnecessary biometric procedures that we typically reserve for adults suspected of or charged with criminal conduct. The agency has failed to engage in reasoned decision-making in proposing this change and must rescind this portion of the NPRM.

d. DHS’s Proposed Collection of Biometric Data to Prove or Disprove an Individual’s Biological Sex Violates the APA

The NPRM also targets transgender and nonbinary individuals without reason or justification, proposing that “DHS may expressly require, request, or accept...DNA evidence to prove or disprove an individual’s biological sex in instances where that determination will impact benefit eligibility.”⁴⁴ DHS claims that collecting DNA to prove or disprove biological sex will only occur in limited circumstances to determine eligibility for immigration benefits.⁴⁵ But DHS has offered no examples of immigration benefits for which biological sex determines eligibility, nor has it identified the benefits for which it will require individuals to submit DNA evidence to prove or disprove their sex. By failing to explain why

⁴⁰ *Id.* at 49068.

⁴¹ *Id.* at 49088-89.

⁴² *Id.* at 49088. *See also id.* at 48089 (providing the same justification for removing the presumption for T nonimmigrant adjustment of status applicants under 14).

⁴³ *See id.* at 49088. (claiming that these changes are not “a significant departure from the existing regulatory scheme” because children under 14 still do not need to provide evidence of good moral character and “USCIS may currently request” such evidence for petitioners under 14 if it has “reason to believe a self-petitioner under 14 years of age lacks good moral character”). *See also id.* at 49089 (making a similar argument for removing the presumption for T nonimmigrant adjustment of status applicants under 14).

⁴⁴ *Id.* at 49066.

⁴⁵ *Id.* at 49067.

and when it needs to collect sensitive DNA information from benefit applicants to prove or disprove their sex, DHS fails to engage in the reasoned decision-making required by the APA.

DHS also claims that using DNA testing to determine biological sex will enable applicants to avoid needing to provide additional evidence of their biological sex.⁴⁶ Again, DHS fails to explain when and why it will ever need to request additional evidence of an individual's biological sex for a benefits application. Even assuming there were situations in which a request for such evidence was justified, it is unclear how DNA evidence of biological sex would increase DHS's efficiency when an applicant likely will already submit vital records containing the same information about their sex. Moreover, basic chromosomal DNA testing cannot confirm an individual's sex: scientific and medical experts have explained that hormones and physical characteristics also play a role.⁴⁷ Some individuals' chromosomes vary beyond XX and XY as well: humans can possess XXY, XYY, and XXX chromosomes, but the NPRM fails to account for such circumstances.⁴⁸ These failures, too, are independent bases upon which DHS has failed to engage in the reasoned decision-making required by the APA.

e. The NPRM Fails to Adequately Consider the Privacy Implications of this Massive Expansion of Biometric Data Collection in Violation of the APA

DHS claims that the NPRM does not create new privacy concerns beyond simply expanding the population affected by potential privacy concerns.⁴⁹ This assertion is not based in reality: the information that DHS seeks to collect necessarily includes the most personal data in existence, such as DNA.⁵⁰ DHS has failed to provide the public with any information about how it will keep sensitive biometric data (which it contemplates collecting from U.S. citizens and lawful permanent residents, as well) secure, how long it will keep such data, and what safeguards will be put into place to ensure the data is not misused. Furthermore, the inherently personal nature of biometric data may make applicants less willing to submit applications for benefits to which they would otherwise be entitled. MALDEF instead encourages DHS to continue updating its Privacy Impact Assessments (PIAs) and to ensure that it adequately protects the privacy of the biometric data that it already collects. In neglecting to consider and explain adequately how DHS will handle the serious privacy implications of this expanded biometrics collection regime, DHS failed to engage in the reasoned decision-making the APA requires.

f. The Costs and Burdens Associated with this Proposed Rule Greatly Outweigh the Benefits of the Program

All of these proposals will greatly increase the burdens on applicants and DHS officers alike, requiring more time, resources, and effort to submit and evaluate biometric data submissions. DHS failed to provide any meaningful data or information about how these expanded biometric collections would make processing benefits more efficient. It does, however, identify the significant burden imposed upon DHS, applicants, and taxpayers. DHS estimates that the annual number of biometrics submissions will

⁴⁶ *Id.* at 49069.

⁴⁷ Hannah Chinn et al., *How Is Sex Determined? Scientists Say It's Complicated*, NAT'L PUB. RADIO (Mar. 12, 2025), <https://www.npr.org/2025/03/12/1237991522/male-female-sex-science-human-biology>.

⁴⁸ *Id.*; 90 Fed. Reg. at 49066.

⁴⁹ NPRM at 49115.

⁵⁰ *Id.* at 49067.

increase from 2.07 million to 3.19 million, a 54% increase of 1.12 million submissions annually.⁵¹ It further estimates that the NPRM will cost affected individuals approximately \$231.5 million per year, and the total monetized costs of this proposed rule “will potentially be \$288.7 million annually.”⁵² Over 10 years, DHS estimates the total cost of its expanded biometric surveillance regime to be between \$2 billion and \$2.5 billion dollars.⁵³ This massive expansion in surveillance will not just balloon costs, but further burden USCIS when it already faces considerable backlogs: DHS should be formulating methods to improve USCIS’s efficiency, not encumbering it with additional burdens that will impede its operations in order to amass highly sensitive personal information for no justifiable reason.⁵⁴

II. Conclusion

Given the extreme and disturbing instances of brutality and overreach that immigration enforcement has committed, escalating over the past year, MALDEF finds DHS’s attempt to expand its collection of biometrics data alarming. For the foregoing reasons, MALDEF respectfully requests that DHS rescind this NPRM in its entirety and pursue alternate routes of increasing efficiency in processing immigration benefits requests. Please feel free to contact us with any questions or concerns about these comments at (202) 293-2828 or efindley@maldef.org.

Thank you.

Sincerely,



Ellen E. Findley
Legislative Staff Attorney

⁵¹ *Id.* at 49069.

⁵² *Id.*

⁵³ *Id.*